

If no tangible personal property is being transferred to the customers, then no Illinois Retailers' Occupation Tax nor Use Tax would apply. See 86 Ill. Adm. Code 130.101. (This is a GIL.)

December 28, 2004

Dear Xxxxx:

This letter is in response to your letter dated October 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC is now offering Solutions for medical device training, support and management of the product. We are in the business of manufacturing, wholesale, retail and service of Automated External Defibrillators (AED). The new 'solution' products are services that help our customer better manage the device, training and maintenance that will be needed as, and when the service is used.

The following information details the services that are included in the Solutions. We would like to find out what is the taxability of these solutions when they are billed as:

1. Bundling all services below together on one line item.
2. Individually billing each service listed below.
3. All services included with the AED.

#### **Wrap Around Solutions-Services**

[Solutions] are offered in multi-year terms. The [Solutions] include the following components:

- Basic Medical Direction – This service includes the prescription for the AED, ongoing medical oversight of the AED program by a state-licensed board-certified physician, protocols for use of the AED, post-event clinical review by physician and an AED clinical help-line that is available M-F 9-5.

- Training – AED/CPR training for 5 individuals through its CREDIT system using its nation-wide training network. The CREDIT is a training voucher redeemable for training 1 student in AED/CPR training, and is valid for 1 year. Training consists of a 4-hour course and is usually provided shortly after the purchase date, and refresher training for 5 individuals is included with the 3 and 5-year programs on a biennial basis.
- Automatic Supply Replenishment for CR+ – automatic replenishment of electrodes/batteries upon use of the device or upon expiration of the supplies.
- Online Program Management – tracks the details of the AED program, including trained responders and their training expiration dates, location of devices, and expiration dates of supplies. All of this information is available to the customer via a web portal.
- State registration services – complete any state registration filing needed for the AED program and also pays registration fee if necessary.
- Post-event download services – Upon use of the AED, a technician will come to the site to download the event data from the AED.
- Post-event rescuer support – Upon use of the AED, a counselor will come to the site to provide counseling services to the company and help people cope with a potentially stressful event.
- AED clinical related helpline 24 hr – Expands the help line offered in the basic medical direction to 24/7 coverage from M-F 9-5.

All of the components outlined above, with the exception of training, are generally provided on a constant, continual basis throughout the service term. Training, however, is provided at specific points in time during the service term and is not continuous. Generally, customers typically will get trained within the first two months of the AED program, although they technically have the ability to get trained anytime within the first year of the service term as the CREDITS are valid for 1 year.

If you could please send a letter of ruling regarding the taxability of our Solution it would be very helpful. We would like to know if this would be taxable or exempt as a service, training or other.

## **DEPARTMENT'S RESPONSE:**

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to the customers, then no Illinois Retailers' Occupation Tax nor Use Tax would apply. Likewise, the Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. See 86 Ill. Adm. Code

140.101 and 160.101. If no tangible personal property is being transferred to the customers incident to the services provided, then no Illinois Service Occupation Tax nor Service Use Tax would apply.

If tangible personal property is transferred incident to the providing of a service, such as the transfer of written reports, supplies, and equipment, those transfers may result in either Service Occupation Tax liability or Use Tax liability for the serviceman depending upon his activities. The serviceman's liability may be calculated in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the serviceman's entire bill; (3) Service Occupation Tax on the serviceman's cost price if the serviceman is a registered de minimis serviceman; or (4) Use Tax on the serviceman's cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale price of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106. These methods result in the customer incurring a Service Use Tax liability. See 86 Ill. Adm. Code 160.101.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction-by-transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. This method also results in the customer incurring a Service Use Tax liability.

De minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act may use the final method of determining tax liability. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108. Under this method the customer incurs no Service Tax liability.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

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